

State of California  
BOARD OF EQUALIZATION

**SALES AND USE TAX REGULATIONS**

**Regulation 1529. MOTION PICTURES.**

Reference: Sections 6006, 6006.1, 6006.3, 6007, 6010, 6010.4 and 6010.6, Revenue and Taxation Code.

**(a) GENERAL.**

(1) A person who produces a motion picture or performs "qualified production services" is the consumer of, and tax applies to the sale to such persons of raw film, sound tape, or videotape stock; paintings; models; artwork; and other tangible personal property for such use.

(2) Tax does not apply to amounts charged for the right to exploit a qualified motion picture.

(3) Tax does not apply to charges for "qualified production services" performed by any person in any capacity (employee, agent, independent contractor or otherwise) in connection with the production of all or any part of a "qualified motion picture".

(4) Tax does not apply to charges for services performed by persons who do not fabricate or process tangible personal property, such as directors and lighting technicians. (See Regulation 1501 for a more detailed discussion.)

**(b) APPLICATION OF TAX.**

(1) **QUALIFIED MOTION PICTURE.** A "qualified motion picture" is any motion picture or portion thereof, whether finished or not, which is produced, adapted, or altered for exploitation in, on, or through any medium or by any device for any purpose, including, but not limited to, any entertainment, commercial, advertising, promotional, industrial, or educational purpose.

**(A)** Qualified motion picture includes, but is not limited to:

1. Motion pictures produced for display at theaters, amusement parks or on commercial carriers; television shows including closed circuit and broadcast; commercials; trailers; television spots; specials; featurettes; "promos"; "sneaks"; corporate training and sales presentations; video press kits; music videos; and special effects, titles, and credits which are embodied on film, tape, or other motion picture media.

2. Original and adapted versions including, but not limited to, adaptation to another language or another medium.

3. Motion pictures produced for the federal government or its instrumentalities, foreign governments, state and local governments, or political subdivisions thereof.

**(B)** Qualified motion picture does not include motion pictures produced for private noncommercial use, such as motion pictures of weddings or graduations to be used as family mementos, accident reconstruction videotapes to be used for legal analysis, or student films to be used for class projects.

**(C)** Tax does not apply to the transfer of all or part of, or any interest in, a qualified motion picture if either:

1. The transfer is prior to the date that the qualified motion picture is exhibited or broadcast to its general audience, or

2. The transfer is to any person holding either directly or indirectly, or by affiliation, any exploitation rights obtained prior to the date that the qualified motion picture is exhibited or broadcast to its general audience. For example, a transfer to any entity that has control over or is under the control of another entity that held any exploitation rights directly would not be subject to tax. Further, a transfer to an entity which is under common control with another entity which held exploitation rights directly would not be subject to tax. Control, as used herein, is the ability of any person, such as a corporate parent or other entity, to direct the policies or actions of another entity through stock or other ownership.

(2) **QUALIFIED PRODUCTION SERVICES.** "Qualified production services" are any fabrication performed by any person in any capacity (including, but not limited to, an employee, agent, or independent contractor) on film, tape, or other audiovisual embodiment in connection with the production of all or any part of any qualified motion picture. Qualified production services include, but are not limited to, photography; sound or music recording; creation of special effects or

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animation on film, tape or other audiovisual embodiment, including animation drawings, inkings, paintings, tracings and celluloid "cels"; technological modification, including colorizing; adaptation; alteration; computer graphics, including transfers of computer graphics on computer-generated media; sound dubbing or sound mixing; sound or music or effect transferring; film or tape editing or cutting; developing or processing of negatives or positives; timing; coding or encoding; creation of opticals, titles, main or end credits; captioning; and medium transfers (e.g., film to tape, tape to tape).

The term includes any such fabrication whether performed on the qualified motion picture before or after the release date.

The term does not include work to manufacture release prints.

Qualified production services include processing performed on a qualified motion picture, except for processing to produce release prints. Processing includes film developing and processing; film to tape transfers; and sound transferring, rerecording, dubbing, and mixing.

**(A) Performance of Services.** Tax does not apply to charges for qualified production services. For example, tax does not apply to charges for photography, film developing other than of release prints, editing, or negative cutting performed on a qualified motion picture.

**(B) Tangible Personal Property.** A person who performs qualified production services is the consumer of, and tax applies to the sale to that person of, tangible personal property which that person uses in the performance of the services. For example, persons who perform nontaxable film and tape processing work are consumers of all chemicals and raw stock used in the process regardless that the final film or tape product is transferred to a customer.

Tax does not apply to the charge for the following tangible personal property transferred in connection with the performance of qualified production services:

1. Film, tape, or other embodiment upon which sound, visual images, or computer-generated graphics are created or recorded. See subdivision (d)(11)(B) for a list of film prints and tapes which are considered to be the product of qualified production services and distinguishable from release prints.

2. Paintings, models, and artwork (including drawings, inkings, tracings, celluloid "cels", or photostats used in the animation process) used by those filming special effects, titles, or credits regardless that title to the property may be transferred to the customer.

Sales of tangible personal property to persons who perform qualified production services are subject to tax. The person performing the services shall not issue a resale certificate when purchasing such property. The application of tax is the same regardless of whether the person contracts to furnish the services and the tangible personal property for one price or separately itemizes such charges and whether the product of the service is transferred in California or is shipped out of state.

**(C) Retail Sales of Tangible Personal Property.** Tax applies to other retail sales of tangible personal property by a person who performs qualified production services. For example, if a person who performs qualified production services purchases costumes or props to include in a scene and transfers title to the property to the customer in California, the retail sale of the costumes or props is subject to sales tax.

### **(D) Services In General.**

1. Tax does not apply to charges for services which are not fabrication or processing of tangible personal property. Such nontaxable services commonly found in the motion picture industry include writing, acting, directing, casting, music composing, management, production consulting and services rendered by stage personnel not performing fabrication or processing labor; such as grips, property personnel, lighting technicians or transportation drivers. Persons rendering services are consumers of any tangible personal property which may be incidentally used in rendering the services. (See Reg. 1501.)

2. Charges for repairing, reconditioning, or restoring a qualified motion picture are not subject to tax. Such nontaxable services include the retiming, remounting, or laboratory splicing of negative or positive film, tape, or other audiovisual embodiment.

3. Appliance Make-up. A person who fabricates and applies expendable appliance make-up is the consumer of materials and make-up used. Tax does not apply to charges made to the customer.

4. Storyboards. The preparation of storyboards for either animation or live photography is a service, and tax does not apply to the charge.

5. Creative Art Services. Tax does not apply to charges or buyout fees for creative art services used in connection with the production, distribution or exploitation of a qualified motion picture. A person who provides creative art services is the consumer of tangible personal property used in the performance of such services and tax applies to

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the sale of property to the service provider. Tax does not apply to the charges for tangible personal property transferred in connection with the performance of creative art services.

However, if the service recipient subsequently displays the property as a work of art (for example, frames it and hangs it on a wall), the service recipient would owe use tax based on their purchase price. In addition, if the property is subsequently physically incorporated into finished art for reproduction by photomechanical processes, the service recipient would owe use tax based on their purchase price.

### **(3) RELEASE PRINTS.**

**(A)** The manufacturing of release prints is not the performance of qualified production services. The application of sales tax to sales of release prints is the same as the application of tax to other sales of tangible personal property; that is, the sale of a release print to a person for exhibition or broadcast is a retail sale subject to sales tax. The sale of a release print for resale is not subject to tax. See subdivision (d) (11) (A) for a list of film and tape products which are release prints.

**(B)** When a contract calls for production or sale of a qualified motion picture, but only requires delivery of one or more release prints, the first film or tape delivered which is of a quality suitable for exhibition will be considered the principal release print. The person required to deliver the principal release print under the contract is the consumer of, and tax applies to the sale to that person of, the principal release print. For the application of tax to all other sales of release prints, whether called for in the original contract or not, see paragraph (A) of this subdivision.

### **(4) STOCK SHOTS.**

**(A)** The production of a stock shot, whether by the owner at its own facility or by a subcontractor, is a qualified production service. The person producing the stock shot is the consumer of, and tax applies to the sale to that person of, tangible personal property which such person uses to produce the stock shot. The transfer, either outright or by lease, of such stock shot by the owner of the stock shot or subcontractor is nontaxable.

**(B)** The outright sale of a stock shot library consisting of negative and/or positive materials is a sale subject to tax unless otherwise exempt.

**(5) SPECIAL PRODUCTION PARTNERSHIPS.** If two or more persons engaged in the production and distribution of motion pictures for use in any media form a partnership for the purpose of reducing the cost of producing motion pictures through the sharing of the use of equipment, studio facilities, and the services of personnel, the furnishing (without transferring title to tangible personal property) of such equipment, facilities, and services by the partnership to its members for the purpose of the production of motion pictures by its members does not constitute a "sale" or "purchase". Refer to subdivision (b) (2) (B) for the application of tax to charges for tangible personal property transferred along with the sale of qualified production services.

### **(6) RENTALS GENERALLY.**

**(A) Rentals of Equipment.** Tax applies to rentals of tangible personal property as explained in Regulation 1660. A person who contracts to provide qualified production services and provides equipment, such as an editing machine or a camera, together with an operator of the equipment to perform the services, does not thereby rent out the equipment but uses the equipment in performing the qualified production services. Such person may not purchase the equipment under a resale certificate but should pay sales tax reimbursement or timely pay use tax on the purchase of the equipment.

**(B) Rentals Under A Studio Facilities Contract.** Under a studio facilities contract, a studio provides the use of certain property and services for a facilities fee. Included within the property made available are items of tangible personal property, the furnishing of which constitutes a rental.

In addition, billings are made for additional costs of materials and labor for sets, props and wardrobes. Such costs include the labor of persons such as carpenters, electricians, painters, plasterers, to fabricate flats, to revamp and change existing flats, and to assemble the components into a set (flats are portable components of sets and are usually prefabricated). Usually the facilities contract provides that title to these items remains in the studio. Under these circumstances, charges billed out as the cost of materials and labor are considered rentals.

In view of the difficulty of determining the amount of taxable rentals included within the facilities fee and the additional costs billed for sets, props, and wardrobes, the taxable rental so included will be deemed to be 55 percent of the actual set designing, set construction, and set striking costs billed to the lessee. The 55 percent factor covers set rentals and rentals of all other items furnished under a studio facilities contract whether charged to production cost or included as a portion of the facilities fee.

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If title to any particular item is actually transferred, e.g., an item of wardrobe to an actress, the entire charge for the item is taxable.

Rentals of tangible personal property by motion picture and television studios which do not have a studio facilities contract with the lessee are taxable in the same manner as rentals generally.

Charges involving rentals of permanent standing sets, which are real property rather than personal property, are not taxable where the transactions are clearly identifiable in the lessor's records.

**(C) Distribution or Rental of Motion Pictures.** Rental receipts from any motion picture such as release prints or stock shots are not subject to tax. Tax applies to leases of videocassettes, videotapes, and videodiscs for private use under which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit, or reproduce the videocassette, videotape, or videodisc. (Reg. 1660, subd. (d)(2).)

**(D) Rentals of Still Photographs and Photographic Slide Films.** Leases of still photographs or photographic slides are subject to tax unless the lessor leases the property in substantially the same form as acquired by the lessor, or by his or her transferor, and the lessor or transferor has paid sales tax reimbursement or has timely paid use tax measured by the purchase price. (Reg. 1660, subd. (b)(1)(E).)

### **(c) MISCELLANEOUS.**

(1) **SLIDE FILMS.** Still slide films and filmstrips are not motion pictures. A person who makes such films or filmstrips for customers is a retailer, and tax applies to charges made to the customers.

### **(d) DEFINITIONS.**

(1) **"ADAPT."** To make suitable for a different use.

(2) **"ANIMATION."** A process by which the portrayal of action is created by a computer or by the recording of a series of images of drawings or models, each image representing an advancement in the action.

(3) **"CUTTING SERVICES."** All labor involved in cutting and splicing film, tape or other embodiment.

(4) **"EXPLOIT" or "EXPLOITATION."** Any use of all or any part of a qualified motion picture, including exhibiting, broadcasting, telecasting, displaying, projecting, transmitting, duplicating, reproducing, distributing, promoting, advertising, commercializing, merchandising, marketing, in any or all media markets and territories and by any or all means, methods, modes, processes, and devices or delivery systems of every kind and character. "Exploitation" includes each and every act comprising part of any phase of the process of exploiting all or any qualified motion picture, whether before or after commencement of principal photography.

(5) **"FACILITIES FEE."** An amount charged by the studio to a person who works on any part of a motion picture under a studio facilities contract which entitles the person to the use of basic facilities, such as stage space, projection room, sound facilities, cutting room, dressing rooms, office space, parking, grip equipment, props, set dressings, drapes, and backings, and to services, such as accounting, budgeting, and janitors. Items provided by studios are usually divided into "below-the-line" elements and "above-the-line" elements. The term "below-the-line" includes all elements related to production other than basic format, scripts, directors, talent, and writers, (including persons such as secretaries, production or administrative assistants, and script secretaries).

(6) **"MODEL."** Any three dimensional representation including, but not limited to landscape or other miniatures, creatures, puppets, sculptures, or non-real life objects or structures.

(7) **"MOTION PICTURE."** Any audiovisual work (at any stage of the production thereof) consisting of a series of related images, either on film, tape, or other embodiment, whether photographic, or otherwise, and for these purposes, includes all physical materials comprising part of, or synchronized with, the motion picture, including the original, duplicate, and other negatives, intermediary film products, tapes, prints and original, duplicate and other sound or visual recordings created to accompany the pictorial material depicted in the motion picture.

(8) **"PRODUCE OR PRODUCTION OF ANY QUALIFIED MOTION PICTURE."** To originate, create, invent, design, devise, develop, photograph, edit, record, imprint, adapt, alter, make, process, fabricate, assemble, construct, or manufacture all or any part of that qualified motion picture by any means, method, or devise of any kind or character, whether before or after commencement of principal photography.

(9) **"QUALIFIED MOTION PICTURE."** See subdivision (b) (1).

(10) **"QUALIFIED PRODUCTION SERVICES."** See subdivision (b) (2).

(11) **"RELEASE PRINT."** A copy of a qualified motion picture complete in all respects, which is of a quality suitable for exhibition or broadcast.

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**(A)** The following film and tape products, if complete in all respects and suitable for exhibition or broadcast, qualify as release prints:

<b>FILM</b>	<b>TAPE</b>
Screening Copy (Complete) A print used for marketing, goodwill or other promotional purposes.	Promo/Marketing Videotape A copy used for marketing, goodwill or other promotional purposes.
Release Print A print produced on high quality stock and used for exhibition to the public.	Broadcast/Air Dub A broadcast quality copy made from an edited or safety master.
Show Print A high quality print used for industry screenings and major market exhibition.	

**(B)** The following film and tape products are not considered release prints but rather are the product of qualified production services:

<b>FILM</b>	<b>TAPE</b>
Work Print/Rush/Daily A positive print made from a developed negative and used for editing. The negative may be the embodiment of elements including, but not limited to, original photography, leaders, opticals, intermediates, sound tracks, overlay titles, or mattes.	Master An original tape of filmed action.
Fine Grain/Interpositive Master Positive An intermediate positive film used for storing and processing images, creating visual effects or duplicate negatives for release printing or for archival or other uses.	Window Dub/Submaster A copy of the master used for editing.
Duplicate (Dupe) Negative Internegative A negative film produced from a fine grain or interpositive and used for producing release prints.	Edited Master An edited copy of a sub or edited master.

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Answer Print/First  
Trial/Composite Print

A print produced from an original or dupe negative for evaluation of color balance and used to generate an interpositive or internegative.

YCM — (Yellow, Cyan and Magenta)

A black and white fine copy of primary colors produced for archival purposes.

Contrast Prints

A print manufactured on special low contrast film emulsion designed to be used for transferring a motion picture from film medium to tape.

Stock Shot

A clip from a motion picture which has been exhibited or broadcasted to its general audience.

One Light Print

An untimed color positive print used for editing purposes.

Black and White ("Blue") Dupes

A positive print generally without sound used for various types of editing.

Safety Master/  
Protection Copy

A back-up copy of a sub or edited master.

Work Print Videotape

An intermediate copy made from film and used for reviewing dailies, preliminary editing or network approvals.

Technical Check Videotape

A broadcast quality copy used for technical and internal review.

Stock Shot

A clip from a motion picture which has been exhibited or broadcasted to its general audience.

Approval Copy

A copy of the director's final version which is prepared for client review.

Viewing/Screening Videotape (Incomplete)

A non-broadcast quality copy of the finished version used for review purposes which may include visual time codes or overt anti-piracy protection or lack title or end credits.

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**Check Print**

A print produced for purposes of checking the quality of the internegative and to assure that subsequent prints conform to the answer print.

**Edited Work Print/**

**Edited Daily**

A print used for internal review prior to a final version.

**Preview Print**

An edited work print which represents the director's final version as required by guild agreement.

**Bid Print**

An interim edited preview print used for evaluating market potential.

**Screening Copy (Incomplete)**

A print used for review purposes which may include visual time codes or overt anti-piracy protection or lack title or end credits.

**Approval Copy**

A preview print used for customer review purposes.

(12) "SETS." Artificial settings for scenes of motion pictures. They may be either of a temporary or portable nature, such as interiors, or of a permanent nature erected on real property, such as Western streets or city streets.

(13) "SPECIAL EFFECTS." A visual representation, on film, tape, or other audiovisual embodiment of illusory live action produced through photographic, electronic, mechanical, or other means, which comprises all or part of a motion picture.

(14) "TECHNOLOGICAL MODIFICATIONS." Alteration of a motion picture through computer, electromagnetic or other processes or means including color imaging and color enhancing.

(15) "CREATIVE ART SERVICES." Creative art services are services performed by persons such as advertising agencies, commercial artists and designers to convey ideas, concepts, looks or messages in connection with production, distribution or exploitation of a qualified motion picture. Creative art services may result in a transfer, enhancement or revision on any medium including, without limitation, the following: roughs, visualizations, drawings, sketches, renderings, illustrations, layouts, comprehensives, photographs, negatives, transparencies, prints, copies, chromatics, stats, logo types, scans, lasergraphics, visual prototypes and electronic imagery. Creative art services do not include services for the preparation of finished art for use in reproduction by photomechanical processes.

(16) "BUYOUT FEES." Buyout fees are amounts paid for the right to use an idea, concept, look or message previously presented during any phase of creative art services.

History: Effective August, 1933.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended by renumbering November 3, 1971, effective December 3, 1971.

Amended November 14, 1974, effective December 22, 1974. Totally revised regulation, added definitions, and added explanation and list of taxable charges to producers.

## Regulation 1529. (Continued)

Amended October 26, 1983, effective November 17, 1983. Paragraph (e) (3) amended as an emergency regulation to provide that tax applied to leases of video cassettes, videotapes, and videodiscs for private use.

Amended November 18, 1987, effective January 1, 1988. Amended subdivisions (b)(1), (b)(19), (b)(20), (c)(2), and (d) and added subdivision (e)(4) and (f) to conform the regulation to the Revenue and Taxation Code and to reflect significant changes that have occurred in the industry over the years, e.g., increased diversification of functions and changes in contractual relationships between the parties to a production.

Amended March 6, 1990, effective May 12, 1990. Totally revised the regulation to conform it to the Revenue and Taxation Code as amended by SB 1405 (Chapter 1157, Statutes of 1988) and added subdivision (3) to provide this amendment is operative September 22, 1988.

Amended September 25, 1996, effective February 16, 1997. Added subdivision 5. to subdivision (b)(2)(D) and subdivisions (15) & (16) to subdivision (d); deleted subdivision (e).

*Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.*